



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2020-0412; FRL-10023-86-Region 5]**

**Air Plan Approval; Michigan; Part 18 and Part 19 Revisions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving Michigan Department of Environment, Great Lakes, and Energy (EGLE) promulgated revisions to its Part 18 Prevention of Significant Deterioration of Air Quality rule and the Part 19 New Source Review for Major Sources Impacting Nonattainment Areas rule. The revisions made to Part 18 and Part 19 were adopted to ensure consistency with Federal rule language and other parts of the Michigan air quality rules. The rule changes are administrative and are intended to provide clarity to the already approved rule language.

**DATES:** This direct final rule is effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, unless EPA receives adverse comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No.

EPA-R05-OAR-2020-0412 at <http://www.regulations.gov> or via email

to [damico.genevieve@epa.gov](mailto:damico.genevieve@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **"FOR FURTHER INFORMATION CONTACT"** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** YeChan Lim, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7259, [lim.yechan@epa.gov](mailto:lim.yechan@epa.gov). The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

## **I. What Action is EPA Taking?**

On August 5, 2020, EGLE submitted a revision to its Michigan State Implementation Plan (SIP). The changes are administrative and involve wording changes to ensure consistency across the Michigan Part 18 and 19 rules, updates to make the Michigan rules consistent with Federal requirements, transfer of adoptions by reference, and corrections to grammar and typographical errors.

EPA is approving into the Michigan SIP revisions to Michigan air pollution control rules Part 18, Prevention of Significant Deterioration of Air Quality. Specifically, we are approving revisions to R 336.2801 “Definitions”, R 336.2802 “Applicability”, R 336.2809 “Exemptions”, R 336.2810 “Control technology review”, R 336.2813 “Air quality analysis”, R 336.2816 “Sources impacting federal class I areas; additional requirements”, and R 336.2823 “Actuals plantwide applicability limits (PALs)”. These revisions were made to ensure consistency with Federal rule language and other parts of the Michigan air quality rules.

EPA is also approving into the Michigan SIP revisions to Part 19, New Source Review for Major Sources Impacting Nonattainment Areas. Specifically, we are approving revisions to R 336.2901 “Definitions”, R 336.2902 “Applicability”, R 336.2903 “Additional permit requirements for sources impacting

nonattainment areas", R 336.2907 "Actuals plant wide applicability limits or PALs", and R 336.2908 "Conditions for approval of a major new source review permit in a nonattainment area". Part 19 was missing definitions that were in the corresponding Federal regulations. The R 336.2901 revisions provided definitions for the phrases "Functionally equivalent component" and "Process Unit", along with revisions to the definition "Net emissions increase". Additionally, portions of R 336.2802 and R 336.2902 were based on identical Federal language, and revisions were made to ensure consistency in rule interpretation across both of these rule parts and with Federal regulations. These revisions were made to ensure consistency with Federal rule language and other parts of the Michigan air quality rules. Finally, EPA is approving into the Michigan SIP, the removal of R 336.2901a from Part 19. R 336.2901a, the adoption by reference, was transferred to Part 9 of Michigan's administrative rules. EGLE also requested the removal of R 336.2801a from Part 18 of the SIP however, R 336.2801a was never approved into the SIP. Therefore, EPA will not be acting on that request.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed.

This rule will be effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice unless we receive relevant adverse written comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

## **II. Incorporation by Reference.**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Michigan Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 5 Office (please contact the person identified in the **"FOR FURTHER**

**INFORMATION CONTACT"** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the Clean Air Act as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

Also in this document, as described in the amendments to 40 CFR part 52 set forth below, EPA is removing provisions of the EPA-Approved Michigan Regulations and Statutes from the Michigan SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

### **III. Statutory and Executive Order Reviews.**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders

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<sup>1</sup> 62 FR 27968 (May 22, 1997).

12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally

permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.



Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Clean Air Act.)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 7, 2021.

Cheryl Newton,  
Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, EPA amends title 40 CFR part 52 as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. In § 52.1170, the table in paragraph (c) is amended:

a. Under “Part 18. Prevention of Significant Deterioration of Air Quality” by revising the entries for R 336.2801, R 336.2802, R 336.2809, R 336.2810, R 336.2813, R 336.2816, and R 336.2823; and

b. Under “Part 19. New Source Review for Major Sources Impacting Nonattainment Areas”:

i. By revising the entries for R 336.2901, R 336.2902, R 336.2903, R 336.2907, and R 336.2908; and

ii. By removing without replacement the entry for R 336.2901a.

The revisions read as follows:

**§ 52.1170 Identification of plan.**

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(c) \* \* \*

EPA--APPROVED MICHIGAN REGULATIONS

Michigan citation	Title	State effective date	EPA approval date	Comments
* * * * *				
<b>Part 18. Prevention of Significant Deterioration of Air Quality</b>				
R 336.2801	Definitions	01/02/2019	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	

R 336.2802	Applicability	01/02/2019	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
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R 336.2809	Exemptions	01/02/2019	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
R 336.2810	Control technology review	01/02/2019	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
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R 336.2813	Air quality analysis	01/02/2019	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
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R 336.2816	Sources impacting federal class I areas; additional requirements	01/02/2019	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
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R 336.2823	Actuals plantwide applicability limits (PALs)	01/02/2019	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
<b>Part 19. New Source Review for Major Sources Impacting Nonattainment Areas</b>				
R 336.2901	Definitions	01/02/2019	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
R 336.2902	Applicability	01/02/2019	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
R 336.2903	Additional permit requirements for sources impacting nonattainment areas	01/02/2019	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
R 336.2907	Actuals plant wide applicability limits or PALs	01/02/2019	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
R 336.2908	Conditions for approval of a major new source review	01/02/2019	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER],	

	permit in a nonattainment area		[INSERT FEDERAL REGISTER CITATION]	
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[FR Doc. 2021-10044 Filed: 5/11/2021 8:45 am; Publication Date: 5/12/2021]